

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 6, 1989

ALL-COUNTY INFORMATION NOTICE NO. I-26-89

TO: ALL COUNTY WELFARE DEPARTMENTS
ALL COUNTY PROBATION DEPARTMENTS
ALL COUNTY COUNSELS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL SDSS ADOPTION DISTRICT OFFICES

SUBJECT: CHANGES EFFECTIVE JANUARY 1, 1989, AFFECTING CHILD
WELFARE SERVICES AND ADOPTIONS PLANNING AS A RESULT OF
CHAPTER 1485, STATUTES OF 1987 (SB 243 - PRESLEY) AND
CHAPTER 1075, STATUTES OF 1988 (SB 1860 - PRESLEY)

Chapter 1485, Statutes of 1987 (SB 243 - Presley) and Chapter 1075, Statutes of 1988 (SB 1860 - Presley) enacted changes that affect child welfare services and adoption planning for children who are adjudged dependents of the juvenile court. Several changes of major significance to child welfare services and adoptions planning have occurred effective January 1, 1989 as a result of the passage of this legislation.

At the request of the County Welfare Directors Association, dissemination of this information was delayed pending clarification of fiscal issues. Additional time was also required to develop the attached summary of county welfare department/adoption agency responsibilities and activity flow chart. Now that those issues have been resolved, the significant features of these statutes are summarized as follows:

1. For children who are adjudged dependents of the juvenile court on or after January 1, 1989, proceedings to terminate parental rights are conducted in juvenile court as a continuum of the dependency process.
2. For children who are adjudged dependents of the juvenile court on or after January 1, 1989, Civil Code (CC) Section 232 cannot be used to terminate parental rights. Welfare and Institutions Code (W&IC) Section 366.26 and CC Sections 224, 224m, and 7017 are the only means to terminate parental rights for these juvenile court dependents.
3. Counsel may be appointed by the juvenile court:

- a. To represent the parent/guardian or child at the W&IC Section 315 detention hearing and at all subsequent proceedings before the juvenile court, including any proceedings to terminate parental rights.
 - b. For the parent/guardian if it appears that he/she is unable to afford counsel.
4. The juvenile court shall appoint counsel:
 - a. If the parent/guardian cannot afford counsel and the child has been placed in out-of-home care or out-of-home care is being recommended unless it finds that the parent/guardian made a knowing and intelligent waiver of counsel.
 - b. For the child if it appears that the child would benefit from counsel.
5. For children adjudged dependents of the juvenile court on January 1, 1989 and thereafter, county counsels in the 28 counties where the State Department of Social Services (SDSS) provides adoption services shall provide the legal and ancillary services for proceedings to terminate parental rights. Legal services previously were provided by the State Attorney General's Office in 22 of the 28 counties.
6. The juvenile court shall order a W&IC Section 366.26 hearing for the purpose of establishing a permanent alternative plan when it does not order reunification services for the child who comes under W&IC Section 361.5(b). (Parent's whereabouts are unknown; parent is suffering from a mental disability as described; child had previously been removed from the custody of the parent as a result of physical or sexual abuse, was returned to custody of parent and is again being removed; parent has been convicted of causing the death of another child through abuse or neglect; or child is under five years of age and became a dependent as a result of severe physical abuse by the parent or someone known by the parent if the parent knew or should have known of the abuse.) This hearing must be held within 120 days of the W&IC Section 361.5 hearing.
7. When the child is to be returned to the physical custody of his/her parent or placed for adoption, or when legal guardianship is to be established, the foster parent of the dependent child may file a report with the juvenile court with a recommendation for disposition of the case.

8. At the W&IC Section 366.21(e) review hearing, held six months after the W&IC Section 361.5 hearing, the juvenile court may schedule the W&IC Section 366.26 hearing within 120 days if the child was removed from the home because his/her parent's whereabouts were unknown and the whereabouts are still unknown.
9. When the juvenile court orders a W&IC Section 366.26 hearing and the child and family have been receiving reunification services, the court shall also order the termination of reunification services. The court shall continue to permit the parent to visit the child unless it finds visitation would be detrimental to the child.

Following is a summary of the major changes that became effective January 1, 1989, that have specific impact on adoptions planning for juvenile court dependents and the termination of their parents' rights to care, custody and control.

- A. CC Section 232: This section does not apply to children who are adjudged dependents of the juvenile court on and after January 1, 1989.
- B. W&IC Section 361.5(g): When the juvenile court orders the W&IC Section 366.26 hearing, it shall direct the agency supervising the child and the licensed county adoption agency, or the SDSS when it is acting as an adoption agency, in counties which are not served by a county adoption agency, to prepare an assessment which is to include a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent and an analysis of the likelihood that the child will be adopted. In any case involving a child age 10 years or older, the child's attitude toward adoption must be included in the assessment. (This section applies to the "fast track" child. The age requirement is different for the child who is in the "regular" process pursuant to W&IC Section 366.21.)
- C. W&IC Section 366.21:
 - 1) W&IC Section 366.21(e): At the review hearing held six months after the initial W&IC Section 361.5 hearing, the juvenile court shall order the child returned to the custody of his/her parent unless return would create a substantial risk of detriment to the child's well-being. The court may continue the case for a review in six months and must inform the parent that if the child cannot be returned home by the next review, a W&IC Section 366.26 hearing may be ordered. This section does

not apply if the court has ordered no reunification services to be provided. In addition, if the child was initially removed from the home because the parent's whereabouts were unknown and remain unknown, etc., or the parent has been convicted of a felony indicating parental unfitness, the court may schedule a W&IC Section 366.26 hearing held within 120 days.

- 2) W&IC Section 366.21(f): At the review hearing held 12 months after the initial W&IC Section 361.5 hearing, the juvenile court shall order the child to return to the custody of his/her parent unless return would create a substantial risk of detriment to the child's well-being.
- 3) W&IC Section 366.21(g): If the child is not returned to the custody of the parent at the W&IC Section 366.21(f) review hearing, the juvenile court shall do one of the following:
 - (a) Continue the case for a review in six months provided that the hearing will occur within 18 months of the initial W&IC Section 361.5 hearing. A continuance may only be ordered if the court finds either substantial probability that the child will be returned to the parent within six months or that reasonable services have not been provided to the parent. The court shall inform the parent that if the child is not returned by the next review hearing a permanent plan shall be developed. The juvenile court cannot order a W&IC Section 366.26 hearing at this point unless reasonable services have been provided/offered to the parent.
 - (b) Order the child to remain in long-term foster care if it determines the child is not adoptable and has no one willing to accept legal guardianship.
 - (c) Order a W&IC Section 366.26 hearing within 120 days.
- 4) W&IC Section 366.21(h): When the juvenile court orders a W&IC Section 366.26 hearing, it shall order the termination of reunification services to the parent. However, it shall permit the parent to visit the child unless it finds visitation would be detrimental to the child.
- 5) W&IC Section 366.21(i): The juvenile court shall also direct the agency supervising the child and the licensed county adoption agency, or the SDSS when it is acting as

an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment of the child as specified, including an assessment of any identified prospective adoptive parent/guardian (to include a screening for criminal records and prior referrals for child abuse or neglect and the understanding of the legal and financial rights and responsibilities of adoption) and an analysis of the likelihood that the child will be adopted. In any case involving a child age four years or older, the child's attitude toward adoption must be included in the assessment. (See notation regarding age of child at B.)

- D. W&IC Section 366.22(a): When the child is not returned to his/her parent at the W&IC Section 366.21(g)(1) review hearing, held 18 months after the initial W&IC Section 361.5 hearing, and the juvenile court has determined that reasonable services have been offered/provided to the parent, the court must develop a permanent plan for the child. The court shall also order a W&IC Section 366.26 hearing within 120 days of the 18-month hearing and terminate the parent's reunification services. The court may permit the parent to visit the child unless it finds visitation would be detrimental to the child.
- E. W&IC Section 366.22(b): When the juvenile court orders a W&IC Section 366.26 hearing, the court shall also direct the agency supervising the child and the licensed county adoption agency, or the SDSS when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment of the child as specified, including an assessment of any identified prospective adoptive parent/guardian (to include screening for criminal records and prior referrals for child abuse or neglect and the understanding of the legal and financial rights and responsibilities of adoption) and an analysis of the likelihood that the child will be adopted. In any case involving a child age four years or older, the child's attitude toward adoption must be included in the assessment. (See notation regarding age of child at B.)
- F. W&IC Sections 366.26(a) and (b): This section specifies the exclusive standards for conducting the hearing to terminate the legal rights of parents of children adjudged dependents of the juvenile court on or after January 1, 1989. This section and CC Sections 224, 224m and 7017 are the exclusive procedures after January 1, 1990, for permanently terminating parental rights for children who are made juvenile court dependents after January 1, 1989. The juvenile court shall: terminate parental rights and order adoption; without terminating parental rights identify adoption as the goal and order that efforts be made to locate an appropriate adoptive

home within 60 days; or without terminating parental rights either appoint a legal guardian and issue guardianship letters or order long-term foster care. During 1989, this section may also be used to conduct the hearing for terminating the legal rights of parents of children adjudged dependents of the juvenile court under W&IC Section 361.5(b).

- G. W&IC Section 366.26(c): At the W&IC Section 366.26 hearing, unless specified circumstances exist, the juvenile court shall terminate parental rights if it determines by clear and convincing evidence that it is likely that the child will be adopted. If the child is difficult to place for adoption and there is no identified prospective adoptive parent, the court may identify adoption as the goal without terminating parental rights and order a search for an adoptive home not to exceed 60 days. This section also defines the term "difficult to place" to mean: having no identified or available prospective adoptive parent because of the child's membership in a sibling group, presence of a diagnosed medical, physical or mental handicap or being seven years of age or more. During the 60-day search, the public agency responsible for seeking adoptive parents shall contact other private and public adoption agencies regarding the child. At the end of the 60-day search, another hearing will be held in which the juvenile court shall terminate parental rights and order that the child be placed for adoption; without terminating parental rights, appoint a legal guardian and issue guardianship letters; or without terminating parental rights, order that the child be placed in long-term foster care.
- H. W&IC Section 366.26(i): When the juvenile court declares the child legally freed from his/her parent at the W&IC Section 366.26 hearing, it orders the child referred to a licensed county adoption agency for adoptive placement. However, no petition for adoption shall be heard until the appellate rights of the natural parents have been exhausted. The licensed county adoption agency continues to be responsible for the care and supervision of the child and is entitled to the exclusive care and control of the child until a petition for adoption is granted. (In those counties where adoption services are provided by the Department, care, custody and control of the child shall remain with the county welfare department.)
- I. W&IC Section 366.26(j): A relative caretaker or foster parent who has cared for a dependent child for whom the juvenile court has approved a permanent plan for adoption or who has been freed for adoption is to be given preference over all other applicants for adoptive placement if the agency has determined that the child has substantial emotional ties to the relative caretaker or foster parent and removal would be detrimental to the child's well-being.

"Preference" is defined to mean that the application of the relative caretaker or foster parent is to be processed and, if satisfactory, the home study is to be completed before processing the application of any other person for the adoptive placement of the child.

- J. W&IC Section 366.3: The juvenile court is to retain jurisdiction over the child for whom it has ordered a permanent plan of adoption; review the status of the child every six months; and terminate its jurisdiction when the adoption is finalized.

To assist the counties in a better understanding of the adoption planning process as a result of the enactment of Chapter 1485, Statutes of 1987 and Chapter 1075, Statutes of 1988, we have developed the attached information. Attachment I is a list of responsibilities for the child welfare services agency and the adoption agency, respectively. Attachment II is a time line showing the responsibilities and their corresponding time frames from the W&IC Section 361.5 hearing through the entry of the adoption decree.

If you have any questions regarding these statutory changes, please contact the Adoptions Policy Bureau at the above address or at (916) 322-4228 or ATSS 492-4228.



LOREN D. SUTER
Deputy Director

Attachments

cc: CWDA

ATTACHMENT I

Children Made Dependent 1-1-89 and After (W&I Code Section 366.26 Hearing)

Responsibilities

W&I Code Sections 366.21 (6-month and 12-month review hearings) and 366.22 (18-month review hearing) clearly delineate the responsibilities of child welfare services agencies for providing notices; submitting court reports of services provided/offered to parents and the progress made, with a recommendation for returning/not returning the child to his/her parents; and meeting the burden of proving detriment to the child.

These sections also delineate the responsibilities of the court as considering reports filed by foster parents, if any, prior to determining disposition of the case; determining whether supervision is necessary in stated circumstances; continuing reunification for another six months (only at Section 366.21 hearing); reviewing the reports prepared by child welfare services agencies; considering efforts/progress made by parents; informing the parent/guardian if the child is not returned home at the next six-month review hearing, that a W&I Code Section 366.26 hearing may be ordered (only at Section 366.21 hearing); ordering long-term foster care; or terminating parental rights and ordering a W&I Code Section 366.26 hearing within 120 days (definitely at Section 366.22 hearing).

Responsibilities for the licensed county adoption agency or the SDSS acting as an adoption agency are delineated, as listed below:

Overall Responsibilities

CWS Agency

1. Determine FC placement.
2. Retain care, custody, and control of the child through court dependency until finalization of the adoption or dismissal of dependency for other reasons.
3. Document search efforts for missing parents as part of reasonable efforts to provide services.

Adoption Agency

1. Work with CWS agency to prepare a report for Section 366.26 hearing which will be held within 120 days. The report shall include:
 - a. A review of the amount/nature of contact between the child and parent(s) since placement.

4. Meet Division 30 requirements for FM/FR.
5. Work with the adoption agency to prepare a report for Section 366.26 hearing which will be held within 120 days. The report shall include:
 - a. Summary of current search efforts for any absent parent.
 - b. A review of the amount/nature of contact between the child and parent(s) since placement.
 - c. An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.
 - d. A preliminary assessment of eligibility and commitment of any identified guardian, particularly the caretaker, to guardianship/long-term foster care. The assessment shall contain a social history, including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and an understanding of the legal and financial rights and responsibilities of guardianship.
 - b. An evaluation of the child's medical developmental, scholastic, mental, and emotional, status.
 - c. A preliminary assessment of eligibility and commitment of any identified prospective adoptive parent, particularly the caretaker, to adopting the child. The assessment shall contain a social history, including screening for criminal records, the capability to meet the child's needs, and an understanding of the legal and financial rights and responsibilities of adoption.
 - d. The relationship of the child to any identified prospective adoptive parents, the duration and character of the relationship, the motivation for seeking adoption, and a statement from the child (if four years or older) about placement and the adoption.
 - e. An analysis of the likelihood that the child will be adopted if parental rights are terminated.

- e. Access the Child Abuse Central Index for information on any prospective adoptive parent.
 - f. The relationship of the child to any identified prospective guardian, the duration and character of the relationship, the motivation for seeking guardianship, and a statement from the child (if four years or older) about placement and the guardianship.
6. Prepare the assessment for the Section 366.26 hearing.
 7. Send notices to meet the requirements of Section 366.26.
 8. Present the assessment at the Section 366.26 hearing.
 9. If the juvenile court orders a permanent plan of guardianship, the court shall retain jurisdiction until the guardianship is established. The court requires status reviews every six months. Once the guardianship is established, the court will terminate jurisdiction unless it feels it is in the best interests of the child to continue court jurisdiction.
 10. If the permanent plan is adoption, continue with the visit requirements of Div. 30 until the adoption is final. (This function can
2. If the juvenile court terminates parental rights and orders the child be placed for adoption at the Section 366.26 hearing, the court will retain jurisdiction until the adoption is completed. The court requires status reviews on the adoptive placement every six months. Once the adoption is final, the court will terminate its jurisdiction.
 3. If the juvenile court identifies adoption as the permanent goal, it can without terminating parental rights order the adoption agency to locate an adoptive home for the child within 60 days. This applies only to those children the court determines are difficult to place for adoption and there is no identified adoptive family.
 - a. During the 60-day period, the adoption agency shall contact other private and public adoption agencies about the child's availability for adoption.
 4. Prepare an adoption assessment on the identified prospective adoptive family.
 - a. Approve the family for placement.

be performed by the county adoption agency since it is organizationally part of CWD, but NOT by the SDSS Adoptions District Office).

5. Prepare the child for the adoptive placement.
6. Prepare adoptive placement agreement with the prospective adoptive family.
 - a. Prepare AAP paperwork as needed. (All AAP paperwork is to be processed by the adoption agency)
7. Place the child with the prospective adoptive family.
8. Supervise the placement.
9. Prepare and present the report to the court with a recommendation for the adoption.

ATTACHMENT II

	361.5 hr.	366.21/22 hr.	120 Days	15 days before	366.26 hr.	Adoption/Guard. Final
Determine FC Placement		(6/ 12/ 18 mos.)	75 days before	45 days before	60 days to seek adoptive home (not always needed)	
Retain Care custody control until finalization		10 days before 30-15 days before (All of these notices are not required in every case)				
Meet Div. 30 requirements for FH/FR which includes visits until dependency dismissed						
Send notices req'd for 366.21/22 hr.						
Assessment: --Summary of current search efforts for any absent parent						
--Review amnt./nature of contact between child/parent(s) since placement						
--Evaluate child's med'l devlpntl, scholastic, mntl, emtnl status						
--Prelim. assess. of ID'd Guardian						
--Prelim. assess. of ID'd pros. adopt. prnt.						
--Access CACI						
--Rltshp of ID'd guard., etc.						
--Rltshp of ID'd pros, adopt. prnt, etc.						
--Analysis likelihood child will be adopt.						
Send notices req'd for 366.26 hr.						
Court orders guard.						
--Status reviews for court						

361.5 hrg. 366.21/22 hrg. 366.26 hrg.

Adoption/Guard.
Final

60 days
to seek
adoptive
home
(not always
needed)

120 Days
15 days
before
45 days
before
75 days
before

10 days before
30-15 days before
(All of these notices are not required in every case)

Court orders perm. plan
of adoption
--Status reviews for court

--Locate adoptive home
within 60 days

--Prepare assess
of pros. adopt. prnt.

*Recommend to CMS adoptive
home placement

--Approve adopt. home

--Prepare child for adopt.
placement.

--Prepare/execute
adopt. placement agree.

--AAP agree.

*--Place child in home

*--Monitor progress of
developing adoption relation-
ship I22, CCH, Div. 2, Chapt. 3,
Sub. 5, Article 8)

--Rpt to Court w/recom.-
finalize adoption

Legend:
CWS -----
Adoption Agency xxxxxxxxx

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